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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ALAN WARENSKI, individually and on behalf of all and others similarly situated,

Plaintiff,

V.

CHARTER COMMUNICATIONS d/b/a
SPECTRUM,

Defendant.

Case No.: 2:19-cv-00101-RFB-NJK

STIPULATION AND ORDER EXTENDING STAY OF PROCEEDINGS

STIPULATION

Plaintiff Alan Warenski and Defendant Charter Communications, Inc., incorrectly sued as “Charter Communications d/b/a Spectrum” (“Charter”), hereby stipulate and agree as follows:

1. Plaintiff commenced this putative class action on January 17, 2019 (ECF No. 1).

2. This lawsuit arises under 47 U.S.C. § 227(b)(1)(A)(iii) of the Telephone Consumer Protection Act (“TCPA”). Plaintiff alleges that Charter called Plaintiff using an “automatic telephone dialing system” (“ATDS”) and a prerecorded voice without Plaintiff’s prior express consent, in violation of the TCPA.

1 3. On June 17, 2020, presented with a stipulation from the parties, the Court stayed
 2 this action (ECF No. 55) in its entirety pending a ruling from the Supreme Court in *Barr v.*
 3 *American Ass'n of Political Consultants*, Case No. 19-631 ("AAPC").

4 4. On July 6, 2020, the Supreme Court decided *AAPC*. *See* 2020 WL 3633780, at *1.
 5 The Supreme Court found that the government debt collection exception was unconstitutional, but
 6 saved 47 U.S.C. § 227(b)(1)(A)(iii) of the TCPA by severing the unconstitutional government debt
 7 collection exception from Section 227(b)(1)(A)(iii). *See AAPC*, 2020 WL 3633780, at *5 ("The
 8 initial First Amendment question is whether the robocall restriction, with the government-debt
 9 exception, is content-based. The answer is yes."); *see also id.*, at *2 (noting six Justices agree that,
 10 through the automated call ban, Congress has "impermissibly favored debt-collection speech over
 11 political and other speech, in violation of the First Amendment").

12 5. Three days after the *AAPC* decision, the Supreme Court granted certiorari in
 13 *Facebook, Inc. v. Duguid*, No. 19-511 (Jan. 9, 2020) ("*Duguid*"), a case from the Ninth Circuit.

14 6. In *Duguid*, the Supreme Court will take up the question of "[w]hether the
 15 definition of ATDS in the TCPA encompasses any device that can 'store' and 'automatically dial'
 16 telephone numbers, *even if the device does not 'use' a random or sequential number*
 17 *generator.*" *See* Question Presented, *Facebook, Inc. v. Noah Duguid*, No. 19-511 (S. Ct.)
 18 (emphasis added); *see also* Order Granting Petition for Writ of Certiorari, *Facebook, Inc. v. Noah*
 19 *Duguid*, No. 19-511 (S. Ct. July 9, 2020).

20 7. In *Duguid*, the Supreme Court is poised to issue a potentially controlling decision
 21 resolving the current circuit split on the definition of an ATDS. The circuit courts of appeals have
 22 reached divergent conclusions concerning the proper *statutory* definition of an ATDS.

23 8. Specifically, the Third, Seventh, and Eleventh Circuits have recognized that an
 24 ATDS is a device that can "(1) store telephone numbers using a random or sequential number
 25 generator and dial them or (2) produce such numbers using a random or sequential number
 26 generator and dial them." *See Glasser v. Hilton Grand Vacations Co., LLC*, 948 F.3d 1301, 1306
 27 (11th Cir. 2020); *Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 468 (7th Cir. 2020); and
 28 *Dominguez v. Yahoo, Inc.*, 894 F.3d 116, 119 (3d Cir. 2018).

1 9. By contrast, the Second, Sixth, and Ninth Circuits have adopted a more expansive
2 definition of an ATDS, concluding that it is “the capacity to ‘store’ numbers [that is] required
3 under the TCPA to be considered ATDSs,” and that such a device must “dial numbers without
4 human intervention.” *See Duran v. La Boom Disco, Inc.*, 955 F.3d 279, 287 (2d Cir. 2020);
5 *Marks v. Crunch San Diego, LLC*, 904 F.3d 1041 (9th Cir. 2018); *Allan v. Pa. Higher Educ.*
6 *Assistance Agency*, No. 19-2043, 2020 WL 4345341, at *9 (6th Cir. July 29, 2020).

7 10. The parties believe that a definitive resolution of the controlling definition of an
8 ATDS will issue shortly by the Supreme Court during this term, warranting a stay here pending
9 the *Duguid* action.

10 11. The parties therefore agree that this action should be stayed in its entirety pending
11 a ruling from the Supreme Court in the *Duguid* case.

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1 12. Therefore, the parties respectfully request that the existing stay order entered on
2 June 17, 2020 be extended pending the Supreme Court's decision in *Duguid*.
3 DATED this 11th day of August, 2020.

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5 DATED this 11th day of August, 2020.

6 /s/ Miles N. Clark

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31 *Attorneys for Charter Communications, Inc.*

32 **ORDER**

33 IT IS SO ORDERED.



34 RICHARD F. BOULWARE, II
35 UNITED STATES DISTRICT JUDGE

36 Dated: August 12, 2020